

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SHANE K. HOPKINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 05-870-SLR
	)	
CORRECTIONAL OFFICER J. PUSEY,	)	
CORRECTIONAL OFFICER J. SMITH,	)	
DEPUTY WARDEN DAVID E. PIERCE,	)	
JR., CPL M. MERSON, JUDITH	)	
MELLEN, DREWRY NASH FENNELL,	)	
AND ATTORNEY GENERAL OF THE	)	
STATE OF DELAWARE	)	
	)	
Defendants.	)	

**DREWRY NASH FENNELL'S AND JUDITH MELLEN'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR AN EXTENSION OF TIME<sup>1</sup>**

Plaintiff Shane K. Hopkins has moved for an extension of time to respond to Drewry Nash Fennell's and Judith Mellen's motion to dismiss the complaint for failure to state a claim. This motion should be denied. Moreover, because plaintiff has failed to respond to Ms. Fennell's and Ms. Mellen's motion to dismiss within the time set by the rules or the Court's order, that motion should be granted.

1. Ms. Fennell and Ms. Mellen are private citizens who have been wrongly wrapped into this prisoner civil rights action. They moved the dismiss any allegations in the complaint against them on June 5, 2006. The answering brief opposing this motion should have been filed

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<sup>1</sup> Plaintiff served his motion by mail on Saturday, August 12, 2006. The response is therefore due on Thursday, August 31, 2006 (ten business days under the local rules (through August 28), plus three days for service by mail).

on or before June 19, 2006 under the local rules of this Court. Plaintiff did not seek an extension of time. The Court then ordered a response to be filed on or before August 25, 2006.

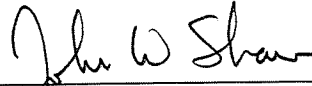
2. Plaintiff has filed a motion for an extension of the date set in this order but has not complied with it. This kind of motion, unless granted, does not toll the time to respond. Cf., e.g., Applied Biosystems, Inc. v. Cruachem, Inc., C.A. No. 89-579-JRR, 1990 U.S. Dist. LEXIS 21003, at \*4-5 (D. Del. Aug. 3, 1990) (rejecting argument that pending motion to sever antitrust issues excused failure to respond to discovery pertaining to antitrust issues).

3. While *pro se* litigants are generally give some latitude concerning compliance with the rules of the Court, there is a countervailing balance in this case. Ms. Fennell and Ms. Mellen are private citizens with a lawsuit hanging over their heads. They deserve prompt resolution of their motion to dismiss as much if not more than plaintiff deserves latitude, and they respectfully submit that plaintiff's two-month failure to respond should no longer be countenanced.

WHEREFORE, defendants Drewry Nash Fennell and Judith Mellen respectfully request the Court to enter an order denying plaintiff's motion for an extension.

Respectfully submitted,

YOUNG CONAWAY STARGATT &  
TAYLOR, LLP



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Attorneys for Defendants  
Judith Mellen and Drewry Nash Fennell

Dated: August 30, 2006

**CERTIFICATE OF SERVICE**

I, John W. Shaw, Esquire, hereby certify that on August 30, 2006, I caused copies of the foregoing document to be served upon the following in the manner indicated:

**BY FIRST CLASS U.S. MAIL**

Shane K. Hopkins  
SBI #00253918, 17-A-L-4  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**BY HAND DELIVERY**

Lisa Ann Barchi, Esquire  
Department of Justice  
Carvel State Office Building  
820 North French Street  
Wilmington, DE 19801

I, further certify that on August 30, 2006, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Lisa Ann Barchi, Esquire  
Department of Justice  
Carvel State Office Building  
820 North French Street  
Wilmington, DE 19801

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ John W. Shaw

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